IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.01.2005

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.MURUGESAN

W.A.No.1590 of 2004
and
W.P.Nos.14830 and 14831 of 2004

W.A.No.1590 of 2004

N.A.Thangavelu ..Appellant.
(Petitioner).

Vs.

1.The State Transport Appellate Tribunal,
City Civil Court Building,
Chennai - 104.

2. The Regional Transport Authority,
Thiruvannamalai.

3. Smt. N.Revathi

4. M.K.Velu Mudaliar,
(R-4 impleaded as per order of the
Court dated 01.06.2004 in W.A.M.P.
No.4189 of 2004) ..Respondents.

PRAYER: Appeal under Clause 15 of the Letters Patent against the order of this Court in W.P.8669 of 2004 dated 01.04.2004.

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For Appellant :: Mr.Vijay Narayan, Senior Counsel
for Mr.M.Suresh Kumar.
For Respondent - 2 :: Mr.V.Raghupathi,
Government Pleader
For Respondent - 3 :: Mr.M.Krishnappan
For Respondent - 4 :: Mr.M.Palani

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W.P.Nos.14830 and 14831 of 2004

Tmt. N.Revathi ..Petitioner in W.P.No.14830/2004

M.K.Velu Mudaliar .. Petitioner in W.P.No.14831/2004 & R-3 in W.P.No.14830/2004

Vs.

1. The Regional Transport Authority, Thiruvannamalai District, Thiruvannamalai.

2. N.A.Thangavelu ..Respondents 1 & 2 in both the W.Ps.

PRAYER: Petitions under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the first respondent made in R.No.795/A3/2000 dated 03.05.2004 in transferring the permit in respect of the route Vellore to Sathanur Dam via Kannamangalam, Polur, Thiruvannamalai and Thandrampet in favour of the second respondent and quash the same.

For Petitioner in W.P.14830/2004 :: Mr.M.Krishnappan

For Petitioner in W.P.14831/2004 :: Mr.M.Palani

For Respondent - 1 in both the W.Ps. :: Mr.V.Raghupathi, Govt. Pleader

For Respondent - 2 in both the W.Ps. :: Mr.Vijay Narayan, Senior Counsel For Mr.M.Suresh Kumar

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COMMON JUDGMENT

(Judgment of the Court was delivered by The Hon'ble The Chief Justice)

This writ appeal has been filed against the impugned order of the learned single Judge dated 01.04.2004.

2. Heard learned counsel for the parties.

3. The facts of the case are that one M.K.Velu, respondent No.4 in this appeal, was a permit holder in respect of a stage carriage plying on the route Vellore to Sathanur Dam (via) Kannamangalam, Polur, Thiruvannamalai and

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Thandrampattu for the portions lying in Thiruvannamalai District since 1972. On 12.01.2000 M.K.Velu and the appellant submitted a joint application under Section 82 of the Motor Vehicles Act, 1988 for transfer of the permit in the name of the transferee viz., N.A.Thangavelu, the appellant herein. Since that application had not been disposed off, a writ petition was filed in this Court on which an order dated 01.03.2000 was passed directing the Regional Transport Authority to decide that application. In the meantime a suit has been filed by one Revathi, daughter of M.K.Velu against M.K.Velu and the Collector and an injunction order dated 10.04.2000 was passed in that suit. That injunction order was made absolute.

4. On 30.05.2000 the Regional Transport Authority passed an order stating that in view of the injunction order in the suit the application for transfer would not be entertained. Against that order an appeal was filed before the State Transport Appellate Tribunal which has been dismissed on 26.07.2001. A writ petition was filed against the order dated 26.07.2001 which has been dismissed, against which the present writ appeal has been filed.

5. It appears that in this appeal an interim order was passed on 21.4.2004 granting the prayer of the appellant for according permission for transfer of the permit in the name of the appellant and accordingly the permit was issued in the name of the appellant on 03.05.2004.

6. We are of the opinion that the interim order of this Court in this writ appeal dated 21.04.2004 was wholly unwarranted. The High Court must exercise self-restraint as held by a Division Bench of this Court in Rama. Muthuramalaingam Vs. The Deputy Superintendent of Police (2004 (5) CTC 554).

7. Granting of permits or licences or transferring the same is the function of the statutory authority under the relevant statute and it is not for this Court to arrogate to itself this function. The High Court cannot issue permits or licences or transfer the same, which is the function of the statutory authority, but this is precisely what in substance the interim order dated 21.04.2004 amounts to have done. The High Court can at best direct the statutory authority to consider the application for grant/transfer of permits or licences in accordance with law within a reasonable period, but the High Court cannot itself perform this function.

8. In G.Veerappa Pillai Vs. Raman & Raman Ltd., (AIR 1952 SC 192 para 24) the Supreme Court observed that the direction of the High Court to the Regional Transport Authority to grant permits to the petitioner was clearly in excess of its powers and jurisdiction.

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9. The grant/transfer of permit is entirely within the discretion of the transport authorities and it is not for this Court to take over this function.

10. In Union of India Vs. S.B.Vohra ((2004) 2 SCC 150) vide in paragraph 33 the Supreme Court observed as follows:

> "It is, however, trite that ordinarily the Court will not exercise the power of the statutory authorities. It will at the first instance allow the statutory authorities to perform their own functions and would not usurp the said jurisdiction itself."

This was followed in another decision of the Supreme Court in State of U.P. Vs. Section Officer Brotherhood ((2004) 8 SCC 286).

11. Since in our opinion the interim order dated 21.04.2004 was clearly beyond the jurisdiction of the High Court, we recall the said order, and hence the consequential order dated 03.05.2004 has also naturally to be set aside, and it is set aside accordingly. There is no infirmity in the impugned order of the learned single Judge dated 1.4.2004 in view of the injunction in the suit. The writ appeal is consequently dismissed.

12. W.P.No.14830 of 2004 is filed against the order dated 3.5.2004 by one N.Revathi daughter of M.K.Velu, who is the original permit holder. W.P.No.14831 of 2004 is filed by the said M.K.Velu himself questioning the very same order. The thrust of challenge to the order is that even prior to the impugned order allowing transfer of permit the consent for transfer has been withdrawn on 01.05.2004 in terms of Rule 212 of the Tamil Nadu Motor Vehicles Rules, 1989. Hence, in the absence of any application pending before the Regional Transport Authority, the transfer of permit by the impugned order itself is illegal and cannot be sustained. The Regional Transport Authority ought not to have transferred the permit in favour of the appellant in the writ appeal. Therefore, we set aside the impugned order dated 03.05.2004. Both the writ petitions are allowed. No costs. Consequently, W.A.M.P.Nos.2986, 3428, 4190 and 4357 of 2004 and W.P.M.P.Nos.17587 and 17588 of 2004 are closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
1.The State Transport Appellate Tribunal,
City Civil Court Building,
Chennai - 104.
2. The Regional Transport Authority,
Thiruvannamalai.

+ 2 Ccs to Mr.S.Udayakumar, Advocate SR NO 721 & 722

+ 1 CC to Mr.M.Suresh Kumar, Advocate SR NO 1052

+ 1 CC to Govt. Pleader SR NO 802

+ 1 CC to Mr.M.Palani, Advocate SR NO 786

+ 1 CC to Mr.M.Krishnappan, Advocate SR NO 718

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